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HUMAN RIGHTS QUESTIONS: IMPLEMENTATION OF HUMAN RIGHTS INSTRUMENTS

Summary account of the results of the proceedings concerning the inquiry on Turkey

Letter dated 29 November 1993 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the views of the Government of the Republic of Turkey with regard to the "Summary account of the results of the proceedings concerning the inquiry on Turkey" of the Committee against Torture, contained in the addendum to the report of the Committee (A/48/44/Add.1).

I should be grateful if the text of the present letter and its annex were circulated as a document of the General Assembly under agenda item 114 (a).

(Signed) İnal BATU
Ambassador
Permanent Representative

ANNEX

The views of the Government of Turkey with regard to the "Summary account of the results of the proceedings concerning the inquiry on Turkey" of the Committee against Torture *

* Circulated in the language of submission only.

Introduction

1. The Committee Against Torture initiated a confidential procedure on Turkey in April 1990 and concluded its work in November 1992. Mr. A. Dipanda Mouelle and Mr. J. Voyame who were designated to make the inquiry made a visit to Turkey from 6 to 18 June 1992. The two members presented their confidential report (CAT/C/IX/Misc.9) to the Committee in November 1992 and transmitted it to the Turkish Government on November 18, 1992. The Committee has decided to publish a "summary account" on the results of its undertakings, at its 11th session held in November 1993. It appeared as document A/48/44 Add.1.

2. Turkey was the first country to which the Committee applied a confidential procedure. Although the Turkish Government considered this decision of the Committee inappropriate, it closely cooperated with the Committee in accordance with Article 20 of the Convention. The Government of Turkey entered into this cooperation with the belief in the good-faith of the members of the Committee while bearing in mind that the general philosophy of the Convention was based on a constructive cooperation between State parties and the Committee. But the Committee acted more like an instance of judgment rather than an instance of cooperation on human rights.

The Turkish Government was disappointed at the approach and the method adopted by the Committee.

3. Although the Committee concedes that "only a small number of torture cases can be proved with absolute certainty", it, nonetheless, reaches a judgment as serious and grave as "the existence and systematic character of the practice of torture" (para. 38) in Turkey, mainly on the basis of allegations.

It should be recalled that much more detailed and time-consuming work of the European Committee for the Prevention of torture did not make such a grave accusation against Turkey.

Since the inquiry on Turkey, being the first within the framework of Article 20, sets a precedent, the Turkish Government deems it appropriate to draw some lessons from it for the benefit of the UN General Assembly and parties to the Convention.

The Allegations

4. The Committee initiated and concluded this confidential procedure on the basis of allegations communicated to it by some NGO's. However, none of these allegations is supported by "clear evidence", which is the basic criterion for admissibility of communications in the UN human rights system.

4.1. In this context, the Turkish Government in a letter dated March 5, 1992 put, among others, the following questions to Amnesty International which had forwarded to the Committee the first set of "information" containing allegations against Turkey.

- "How does your organization interpret the concept of "clear evidence" which should back up communications of allegations... ?"

- "How does your organization justify publishing unchecked allegations... when domestic as well as international judicial means are available for the 'victims' of human rights violations ?"

4.2. Amnesty International's reply of April 26, 1993 stated that the allegations "are supported by a wide range of evidence: court judgments, official documents, medical certificates and photographs".

Nevertheless, all the reports of Amnesty International, including presumably the one which was presented to the Committee, are full of allegations without any 'evidence'. This NGO always criticizes the courts and forensic medicine of the countries in question. It is impossible to understand what it means by "official documents". Photographs are not recognized as evidence by most judicial systems, for it is very difficult to verify them.

Therefore, it appears that, as it refers in its letter, Amnesty International uses as 'evidence' "press reports, interviews with victims, lawyers, relatives, and political parties". Amnesty International is unable to produce objectively convincing evidence to support these allegations.

4.3. It also appears that the work of Amnesty International is influenced by political motivations. Following Turkish Government's application to EC for membership Amnesty International's attitude towards Turkey reveals glaringly the extent of its politicization. In 1987, when Turkey made its request for membership, Amnesty International had confined its views on Turkey to a report of 21 pages. In 1988 it published 45 pages. And in 1989, the year when the European Commission made public its "opinion" on Turkish accession, its reports went up to 141 pages. In the UN human rights system, the absence of political motivation in allegations is another important criterion of admissibility.

4.4. It is this kind of "information" that the Committee found "credible" and "well-founded" to indicate "that torture was practised systematically in Turkey" at the beginning of its inquiry' (para.5 of the Summary Report.(*) In its final declaration (para. 58), the Committee remained on this initial premise of allegations, while pointing out that "the existence and the systematic character of the practice of torture" were confirmed by "the number and substance of the allegations". In other words, the statistics on allegations without "clear evidence" largely determined the spurious nature of the judgment by the Committee on Turkey, since the Committee conceded that "only a small number of torture cases can be proved with absolute certainty".

4.5. In a situation where terrorism is perpetrated by a group upholding a totalitarian ideology and inciting ethnic and secessionist aspirations, it is quite easy to use the communication system for the purpose of its struggle.

(*) The Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights decided at its 44th Session in August 1992 to close the file which had been initiated by Amnesty International within the framework of the confidential procedure of 1503. The fact that the allegations forwarded by this NGO were not supported by "clear evidence" and were not accompanied by information about domestic remedy while Amnesty International did not take into account terrorism in Turkey might be the reason which led the Sub-Commission to this decision.

The Committee refers to the consistency of the 'testimonies' (since the Committee is not a juridical instance to take testimonies, we should rather call them 'interviews' with individuals) regarding the description of the torture techniques, places and circumstances in order to support its conclusions. This consistency in allegations and interviews, however, may be more a sign of a smear campaign launched by the individuals or associations close to or affiliated with the terrorist organization. By repeating identical and stereotyped allegations, they wish to blame the Government and its security forces in the eyes of those who, for various reasons, tend to support, magnify and legitimize these allegations. This tactic can be put to use all the more easily in a democratic country like Turkey.

5. Even though the Committee Against Torture had to recognize that the existence and systematic character of torture in Turkey could not be proven with absolute certainty, despite the visit performed by two of its members to Turkey and the freedom of access accorded to them, this situation did not preclude the Committee from reaching the above-mentioned conclusion. This conclusion relies heavily on the reports of NGO's, whose objectivity and impartiality are, as indicated earlier, questionable. It should also be underlined that no communication by or on behalf of any individual subject to Turkey's jurisdiction has ever been submitted to the Committee Against Torture under article 22 of the Convention.(*)

(*) Furthermore, Turkey is one of those members to the Council of Europe against which the least number of individual communications of torture has been filed.

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Neither the Committee, nor its members designated to make the inquiry have requested the view of the Turkish Government on the allegations included in the report. It is also understood that the replies of the Turkish Government forwarded earlier to various human rights instances regarding most of these allegations have not been consulted either.

In view of the above, the Turkish Government opines that the Committee Against Torture has set an unfortunate precedent regarding the implementation its mandate for the confidential procedure.

Errors and Omissions

6. The "confidential" report (CAT/C/IX/Misc.9) that Messieurs Dipanda Mouelle and Voyame prepared following their visit to Turkey, is dominated by some crucial errors and prejudices of form and substance. In the summary account these erroneous elements do not appear. The fact that these have been severely criticised in the Turkish Government's responses must have led to their omission. Nevertheless, the summary account repeats the confidential report's conclusions. Given that these erroneous elements have, by their nature and gravity, considerably influenced the conclusions of the whole procedure, they need to be made public and openly discussed.

6.1. In the report, the situation in the South-east is described as a conflict between Turkish security forces and the Kurdish population. An attempt is thus made to broaden the context of a combat against a terrorist organisation. It is this warped perception of an alleged ethnic conflict that dominates the report and its conclusions.

Some of the errors and omissions highlighting this approach are mentioned herebelow:

6.2. The report claims that "in the southeastern region there is a sizeable "Kurdish population" estimated at 12 million" (para.19)

It must be noted that the entire population "in the southeastern region" is 2.9 million and not all of them are Kurds. The great majority of "Kurds" live in peace and harmony in the Western parts of Turkey. Most of the violent incidents take place in an area adjacent to Iraq and Syria.

6.3. The report calls the Southeast region of Turkey as "Kurdistan" (para's. 20, 47, 87 and 184).

In Turkey, an area with the name "Kurdistan" exists neither geographically, nor administratively. The use by a UN convention body of geographical names not accepted by member states is totally inadmissible (*).

(*) "... geographical names given and/or standardized by a body other than that nationally authorized should not be recognized by the United Nations..." (Third UN Conference on the Standardization of Geographical Names, Athens, 17 August-7 September 1977, Vol.I, Report of the Conference, UN Publications, Sales no. E.79.I.4, chapter III).

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6.4. The report does not contain any reference to "terror", "terrorist" or "terrorism". The terrorist organisation PKK is denominated in the report as "PKK guerillas", "Kurdish rebels", "PKK combatants", "armed opposition groups", and "PKK activists" (para's 34, 97, 184, 214, 220, 227 and 228).

The conflict in Southeast Anatolia is between security forces and a terrorist group which calls itself PKK. Ever since the launching of its terrorist campaign in 1984, the PKK has mainly targeted civilians, mostly women, children and elderly (the PKK has assassinated more than 2000 civilians of mainly Kurdish origin). It raided villages, fired at cafés and buses, derailed trains, attacked schools, hospitals, government buildings, and destroyed development projects, thus terrorising the population and condemning the region to misery and backwardness within a democratic and economically booming country.

In international law, a group which commits terrorist acts, methods and practices is terrorist, no matter what its political aspirations are. To call terrorists anything but terrorist gives an impression of condoning their crimes, even indirectly legitimizing them. It is in this spirit that most of the UN member states condemn the PKK as a terrorist organisation.

Moreover, in Turkey there is no political crime, nor political prisoners, nor prisons for them. To qualify terrorism as political crime is to legitimize it. It is not possible to subscribe to an understanding which identifies "possessing/throwing explosives" with political crimes.

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The fact that acts of violence perpetrated by armed groups are mildly and furtively condemned in para.40 of the summary account does not diminish the gravity of the errors and omissions characterising the general approach of the report's authors.

Conclusion

7. It goes without saying that such factual and substantive errors show that the two members of the Committee conceived of an illusory context of ethnic conflict in which the security forces were presented as an instrument of repression against the entire Kurdish population. This context naturally gave rise to a perception of the existence and systematic character of torture in Turkey.

8. Briefly, the conclusions of the report which allege the existence and systematic character of torture in Turkey are based on the interaction of two precarious assumptions :

First, allegations not supported by "clear evidence", communicated mainly by individuals close to the PKK and relayed by certain NGO's, were considered credible and well-founded.

Second, an ethnic approach which omits PKK terrorism and presents the security forces' combat with terrorism as repression against "12 million Kurds" in "south-east Turkey", mentioned as "Kurdistan", was adapted to create the context of "torture".

The authors of the report tried to vindicate these assumptions on the occasion of their visit to Turkey. They saw things the way they wanted to see them.

Such an approach to their inquiry naturally led the rapporteurs to detect all sorts of elements which could be qualified at best as "circumstancial evidence" for the systematic character of torture in Turkey, being fully aware, however, that "only a very small number of torture cases can be proved with absolute certainty". The term "a very small number" has to be defined as well.

9. It turns out that human rights bodies should take into consideration the various aspects of the mission to be carried out, while nominating its members for these missions. One should think whether it was appropriate for the Committee to select for a mission with ethnic overtones, one of its members coming from a country which, due to its own ethnic particularities, has always been inclined to show a ready comprehension towards ethnic dissensions in other countries.

10. Notwithstanding the above criticism directed at the report prepared by the two members of the Committee, the Turkish Government admits that sporadic cases of torture may occur in Turkey. It is extremely difficult to entirely eradicate torture, when faced with terrorism of such scope and intensity. These challenges compel governments to become even more vigilant in their combat against torture. It is with this understanding that the Turkish Government continues to take and implement necessary measures, both in legislation and in practice, in order to eliminate this crime. The summary account of the Committee contains, to a certain extent, information regarding these measures and their implementation. Indeed, these measures were included in the Government's action programs.

11. It is important to underline that a combat against a group as savage as the PKK necessitates inevitably a longer period of police custody for suspects of terrorist crimes in the regions under the state of emergency. The government must give priority to the protection of the right to life of people living in this region. Such durations of custody do not justify allegations of torture. For the time being, they remain necessary in combatting the kind of terrorism which currently exists in Turkey.

All international organisations entrusted with the promotion of universal respect for human rights should, without resorting to mild or evasive condemnations, declare unequivocally that terrorist acts aiming at the lives of innocent civilians constitute the gravest form of human rights' violation. The primary mission of the security forces is to eliminate this threat against the most essential of human rights. It is very difficult to imagine that a study which is devoid of these fundamental aspects could produce worthy and useful conclusions.

Unfortunately, this is the case with the confidential procedure whose conduct and conclusions are far from making any meaningful contribution to Turkey. It is highly doubtful that the inquiry, in the way it has been realised, will contribute to the spirit of cooperation between States Parties and the Committee. On the contrary, the possibility that the Committee's work may be used by the terrorists for justifying the horrors they commit, constitutes a serious cause for concern.

Recommendations

The Government of Turkey would like to make the following recommendations regarding the Committee's working methods in the application of the confidential procedure :

1. Before taking a decision on confidential procedure, the Committee should forward all allegations to the State party concerned and elicit its views.

2. The general context to be described in the confidential report in which torture allegations will be examined should be prepared in full cooperation with the State party concerned in order to avoid factual mistakes and crucial errors of approach.

3. The Committee should be extremely careful in designating its members to make an inquiry. For instance, a member who may tend to a pro-ethnic approach, because of his country's historical characteristics, should never be designated for a case with ethnic overtones. At a time when clashes of civilisations are the order of the day, the risk of prejudices, including religious ones, should also be taken into account.

4. The Committee should comply with the UN rules on geographical denominations.

5. In no way, should the conclusions of an inquiry be conducive to interpretations against the territorial integrity and political unity of the State parties.

6. In no way, should the conclusions of the inquiry be conducive to condoning the most serious violation of human rights, namely the killing of the innocent under the pretext of eliminating torture.

7. The reply of the State party to the confidential report should be annexed to the summary account, if the latter is to be published.

These conditions, commonly applied by other international bodies dealing with human rights, constitute the bare minimum for the orderly conduct of the work of the Committee.

Unless they are fulfilled, the States Parties may wish to consider whether the necessary prerequisites exist which would be conducive to a constructive and confidential dialogue between the States Parties and the Committee.